Federal Court Cour fédérale

Date: 20191220

Dockets: T-542-19
T-544-19

Citation: 2019 FC 1651

Ottawa, Ontario, December 20, 2019

PRESENT: The Honourable Mr. Justice LeBlanc

Docket: T-542-19

BETWEEN:

NOUR ALI NABOULSI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: T-544-19

AND BETWEEN:

KHALED ALI NABOULSI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicants in these two cases, Nour Ali Naboulsi and her younger brother, Khaled Ali Naboulsi, are Lebanese nationals. In the fall of 2009, they applied for Canadian citizenship through their father, as they were both minors at the time. They did so under subsection 5(2) of the *Citizenship Act*, RSC 1985, c C-29 [Act] which, as it reads now and as it read in 2009, sets out the requirements for a minor applicant to be granted Canadian citizenship. These requirements are that the applicant must be a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] as well as the child of a Canadian citizen.

[2] They are before the Court to seek judicial review of the decision of a Citizenship Officer [Officer], dated March 13, 2019, denying their applications for Canadian citizenship on the ground that they have not provided adequate evidence that they were permanent residents of Canada in 2009, when their Citizenship applications were filed, or that they have that status today.

[3] The Applicants' main contention against the Officer's decision is that, by requiring further proof of their permanent resident status and by applying current provisions of the Act in

assessing their citizenship applications, the Officer contravened the spirit and letter of an out-of-court settlement agreement concluded with the respondent Minister [Minister] on July 31, 2018 [Agreement]. They claim that according to the Agreement, their citizenship applications were to be reopened and processed with the lock-in date of November 9, 2009, which meant that they were to be determined based on the facts and the law applicable at that date.

[4] Since both judicial review applications arose from an identical evidentiary record and identical decisions rendered by the same officer, they were heard together. These Reasons will therefore address both applications and will be filed in both Court file T-542-19 and Court file T-544-19.

II. Background

A. *The Applicants' citizenship applications and their processing*

[5] This case has a long history. The Applicants were born in Saudi Arabia. Along with their father, they entered Canada in 2003 as permanent residents. Their father became a Canadian citizen on May 27, 2008. As for the Applicants' mother, although it does not specify when and why, the record indicates that she was found inadmissible and was removed from Canada.

[6] In 2009, the Applicants applied for Canadian citizenship pursuant to subsection 5(2) of the Act, as the minor children of a Canadian citizen. Khaled Ali applied on September 21, 2009, and Nour Ali applied on November 3, 2009. There is no explanation regarding their different

application dates. The Applicants were, respectively, 12 and 14 years of age when their applications were filed.

[7] On their application forms, they indicated not having left Canada for more than six months since they became permanent residents of Canada in 2003. Along with their applications, they included copies of their permanent resident cards [PR Cards]. However, these cards had expired in 2008.

[8] From September 2010 and onwards, a review of the Global Case Management System Notes [GCMS Notes] shows that the citizenship authorities were concerned with issues regarding the Applicants' residency, notably because their father was under investigation for possible residence fraud.

[9] On December 30, 2015, the Applicants' father became the subject of citizenship revocation proceedings on the basis that he had obtained his Canadian citizenship by means of false representation, fraud or by knowingly concealing material circumstances. A few months later, on March 31, 2016, their father's Canadian citizenship was revoked. On the same day, the Applicants' applications for citizenship were denied, as it was considered that the requirement of being the minor child of a Canadian parent was no longer satisfied. According to the decision form on record, the other requirement to a subsection 5(2) application – being a permanent resident – was not assessed.

[10] On May 10, 2017, the Act's framework for revoking citizenship on grounds of fraud or misrepresentation, which permitted the Respondent, in most cases, to revoke citizenship without providing the individual concerned with the opportunity to make his or her case before an independent decision-maker, was found to be in violation of subsection 2(e) of the *Canadian Bill of Rights*, SC 1960, c 44 (*Hassouna v Canada (Citizenship and Immigration)*, 2017 FC 473 [*Hassouna*]). This decision benefited to a number of similarly situated individuals, including the Applicants' father, who had received a Notice of Intent to revoke their citizenship and had then challenged the constitutional validity of that framework (see *Hassouna*'s companion case: *Monla v Canada (Citizenship and Immigration),* 2017 FC 668).

[11] As a result of these two judgments, the father's Canadian citizenship was reinstated effective the date it was first granted and the Applicants requested that their citizenship applications be reconsidered. That request was denied. On June 7, 2018, they were granted leave to judicially review that decision. A few weeks later, on July 31, 2018, the Agreement was reached.

[12] According to the Agreement, the Applicants' citizenship applications, dating back to the fall of 2009, would be reopened upon filing a notice of discontinuance of their pending judicial review proceedings and they would be processed under subsection 5(2) of the Act as if the Applicants were still minors. At the time when the Agreement was concluded, they were both adults. The Applicants acknowledged, however, that the reopening of their citizenship applications under the Agreement was no guarantee that they would be granted.

[13] On August 20, 2018, in the course of the reconsideration of their applications, the Officer contacted the Applicants in order to seek additional evidence. She did so, according to her decision, pursuant to section 23.1 of the Act, which had come into force on August 1, 2014, through the *Strengthening Canadian Citizenship Act*, SC 2014, c 22 [SCC Act]. In particular, she requested a copy of any passports and/or travel documents, valid and expired, covering the period between the time the Applicants became permanent residents and the time they filed their citizenship applications in 2009. The Officer was looking for confirmation that the Applicants "did not leave Canada for 6 months or longer since [then]". She also asked for valid PR Cards, as the ones filed with the applications were expired.

[14] The Applicants first refused to provide the Officer with any of the requested information. According to them, the terms of the Agreement were clear and any demands pursuant to section 23.1 of the Act would contravene both the terms and spirit of the Agreement. They also sought leave from the Court to reopen the proceedings that had been settled by the Agreement as they were of the view that the Officer could not legally require them to provide such further evidence.

[15] On September 14, 2018, the Court, as per Justice Mosley, denied leave on the ground that the Applicants had no reasonable prospect of success if the settled proceedings were to be resurrected. Justice Mosley found that this request to revive these proceedings was premature and would be moot in the event that their citizenship applications were granted, because the Officer had not yet confirmed her intention to apply the current version of the Act.

[16] Approximately two months after her first request for further information, the Officer made another request, again pursuant to section 23.1 of the Act. This time, she sought evidence that the Applicants were currently permanent residents. She also informed them that they would need to contact a Canadian visa office abroad in order for their immigration status to be determined. On November 13, 2018, the Applicants reiterated their position that the Agreement prevented the Officer from making such requests, but did provide the Officer with documentary evidence (landing record, copy of emails correspondence between immigration officials and copy of GCMS Notes) that would demonstrate their status and the fact that they had maintained it throughout the whole period.

[17] On January 9, 2019, the Officer expressed concerns with the evidence the Applicants submitted on November 13, 2018. She provided the Applicants with an opportunity to respond to said concerns and to submit evidence regarding their immigration status within 30 days. She informed them that the failure to do so would lead to the assessment of their applications based on the information currently on file, which could result in the denial of said applications.

[18] On February 6, 2018, the Applicants, once again, responded by reiterating the terms of the Agreement. They also warned the Officer that due to the unreasonable and abusive delaying of the processing of their applications, they would claim damages against her and those responsible for what they considered an abuse of process.

B. *The Officer's decision*

[19] As indicated at the outset of these Reasons, the Officer denied the Applicants' citizenship applications on the ground that they had failed to provide adequate evidence that they were permanent residents of Canada when they filed their citizenship applications in the fall of 2009 or that they have that status today.

[20] The Officer first addressed the various amendments made to the Act in the course of 2014, with the enactment of the SCC Act, which included numerous amendments aimed, according to the Officer, at combatting fraud and protecting the value of Canadian citizenship. One of these amendments was the enactment of subsection 22(6) of the Act, which now requires citizenship applicants to meet the requirements of the Act up until they take their oath of citizenship.

[21] Being satisfied that subsection 22(6) was applicable to the Applicants' citizenship applications, even though said applications were filed prior to the coming into force of that new provision, the Officer reviewed the evidence provided by the Applicants in support of their applications. She drew a negative inference from the fact that the Applicants did not provide valid PR Cards in support of their applications or when she requested additional information in the fall of 2018. She also reviewed their immigration records, which, according to her, confirmed that the Applicants had never applied to renew their PR Cards since they had expired.

[22] She further gave little weight to the landing records provided by the Applicants. While these documents confirm that the Applicants were permanent residents upon their arrival in Canada in 2003, they do not constitute, according to the Officer, adequate evidence to determine whether they still had that status in 2009 or that they have said status today.

[23] She finally reviewed both the email correspondence between citizenship officials and the GCMS Notes submitted by the Applicants to demonstrate previous acknowledgment by other citizenship officers of their permanent resident status, and she concluded that this evidence was not sufficient to establish the Applicants' status in 2009.

C. *The Applicants' claim against the Officer's decision*

[24] The Applicants claim that the Officer's analysis and ensuing conclusions are fatally flawed, on both substance and process, as they are entirely premised on legal provisions – section 23.1 and subsection 22(6) of the Act – that did not exist at the time the Agreement was agreed upon. As indicated at the outset of these Reasons, they claim that the Agreement ousted the Officer's authority to rely on these provisions in order to seek further proof of their permanent resident status. Rather, they say, their citizenship applications had to be processed and decided based on the law as it stood at the time their applications were filed, regardless of the amendments subsequently made to the Act.

[25] They further claim that since their citizenship applications were denied on the sole ground of their father's citizenship revocation, the Officer had no authority to question their immigration status the way she did when she reopened the case pursuant to the Agreement.

[26] In the alternative, the Applicants argue that the Officer's determination regarding their immigration status in 2009 was unreasonable for two reasons. First, they allege that both the GCMS Notes and the emails between other citizenship officials show that they were considered permanent residents at the time. Second, they claim that this determination proceeds from an incorrect interpretation of IRPA, especially section 46 and its interplay with the Act. Regarding this determination, they also argue that the Officer breached the principles of procedural fairness when she failed to provide them with the opportunity to respond to her concerns about their status at that time.

[27] Lastly, the Applicants submit that the Respondent engaged in an abuse of process by unreasonably delaying the processing of their applications for seven years before a determination was finally made on said applications. They claim that the Respondent should not be entitled to benefit from this unreasonable processing delay, which caused their applications to be assessed based on statutory provisions that did not exist at the time they filed their applications.

III. Issues and Standard of Review

[28] In my view, this matter raises the following two issues:

a. Did the Officer commit a reviewable error, both on substance and process, in requiring the Applicants to possess permanent resident status both in 2009, when they filed their citizenship applications, and at the time she rendered her decision, and in concluding that they had failed to prove that they had that status at both times?

b. Did the Officer breach the principles of procedural fairness by not providing the Applicants with an opportunity to disabuse her concerns regarding the information they provided so as to establish their immigration status at the time they filed their applications?

[29] It is trite law that the standard of review applicable to decisions dismissing citizenship applications is reasonableness, since these types of decisions raise mixed questions of fact and law (*Haddad v Canada (Citizenship and Immigration)*, 2018 FC 137 at para 6). This means that such decisions are to be accorded some deference and that the Court will therefore only interfere with these if they fall outside a "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick,* 2008 SCC 9 at para 47).

[30] It is also trite law that the failure to observe a principle of procedural fairness is to be determined using the correctness standard of review (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Mission Institution v Khela*, 2014 SCC 24 at para 79). In such instances, the Court owes no deference to the administrative decision-maker.

IV. Analysis

A. *Did the Officer commit a reviewable error, both on substance and process, in requiring the Applicants to possess permanent resident status both in 2009, when they filed their citizenship applications, and at the time of the Officer's decision, and in concluding that they had failed to prove that they had that status at both times?*

(1) The statutory landscape

[31] When the Applicants applied for Canadian citizenship, subsection 5(2) of the Act, as noted at the outset of these Reasons, required them to establish, in order for their applications to succeed, that they were permanent residents within the meaning of subsection 2(1) of IRPA and that they were the child of a Canadian citizen.

[32] At that time, subsection 2(1) of IRPA defined the expression “permanent resident” as follows:

permanent resident means a person who has acquired permanent resident status and has not subsequently lost that status under section 46 *(résident permanent)*	**résident permanent** Personne qui a le statut de résident permanent et n’a pas perdu ce statut au titre de l’article 46. *(permanent resident)*

[33] According to subsection 31(1) of IRPA, a person enjoying the status of a permanent resident was to be provided with a document indicating said status. This document took the form of a PR Card as per subsection 53(1) of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 [Regulations]. PR Cards were usually valid for a period of 5 years and could only be renewed in Canada, at the request of the holder of the document.

[34] Pursuant to subsection 31(2) of IRPA, a person in possession of a PR Card was presumed to be a permanent resident whereas a person outside Canada who was not in the possession of such document was presumed not to be a permanent resident. In both instances, however, an immigration officer could decide otherwise.

[35] The mere fact of being in possession of an expired PR Card did not mean that the holder had lost his or her permanent resident status. According to subsection 46(1) of IRPA, there were a number of instances where a permanent resident status could be lost through a formal process, including on a final determination of a decision made outside of Canada that the person has failed to comply with the residency obligation provided for under section 28 of IRPA. That provision required a permanent resident to be physically present in Canada for a total of at least 730 days for every five-year period.

[36] These IRPA requirements regarding permanent resident status have not changed in any material way since the Applicants' citizenship applications were filed. However, the Act has gone through some changes.

[37] In 2014, Parliament adopted the SCC Act. The SCC Act updated the eligibility conditions for obtaining Canadian citizenship, strengthened the provisions pertaining to security and fraud and amended those governing the processing of applications and the review of decisions taken under the Act.

[38] In particular, the SCC Act created a new ground to prohibit the taking of the oath of citizenship where the applicant has never met, or no longer meets, the requirements for the grant of citizenship. This new ground, which appears at subsection 22(6) of the Act, came into force on June 11, 2015. Through the operation of a transitional provision found in the *Act to amend the Citizenship Act and to make consequential amendments to another Act*, SC 2017, c 14, subsection 22(6) of the Act was made applicable to all citizenship applications made under

subsections 5(1) or (2) of the Act that were filed before June 11, 2015 and where the applicant had not yet taken the oath of citizenship while required to do so, before that transitional provision came into force in June 2017.

[39] With respect to the processing of citizenship applications, the SCC Act amended the Act by enacting section 23.1, which empowers the Respondent to require a citizenship applicant "to provide any additional information or evidence relevant to his or her application" and to specify in doing so the date by which such information or evidence is required. That new provision was also made applicable, by section 31 of the SCC Act, to pending applications.

[40] The SCC Act also empowered the Respondent, through the enactment of section 13.2 of the Act, to treat applications as abandoned where the applicant had failed, without a reasonable excuse, to provide the information or evidence required under section 23.1 of the Act. Section 13.2 of the Act was made applicable to applications made prior to August 1, 2014.

[41] It would appear, therefore, that these amendments to the Act were in principle applicable to the Applicants' citizenship applications.

[42] Did the Agreement change that?

(2) The Agreement

[43] The Agreement was put down in writing in an exchange of letters between the parties' legal representatives at the time. The letter from the Respondent's legal representative, dated

July 31, 2018, accepting her counterpart's offer (Certified Tribunal Record [CTR], T-542-19 at p. 117; T-544-19 at p. 99), reads as follows:

> Dear Confrere,
>
> I confirm that my client, Citizenship and Immigration Canada, accepts your offer. Upon filing a notice of discontinuance of their judicial review and motion for contempt, your clients' citizenship files will be reopened under s. 5(2) of the *Citizenship Act* and they will be processed as minors based on the application dated 2009/11/09. All efforts will be made to proceed with processing their applications within thirty (30) days of the filing of the notice of discontinuance, with the understanding that no specific timeline can be proposed for a decision.
>
> The whole without costs.

[44] The Applicants' legal representative's letter of the same day confirming the Agreement (Respondent's Record, T-542-19 and T-544-19 at p. 18), refers to the same terms and includes the following sentence:

> We understand that the present offer is in no way a promise of citizenship but only an offer to re-open the citizenship files received on 2009/11/09.

[45] There is evidence on record from both legal representatives as to their understanding of the terms of the Agreement. That evidence is conflicting.

[46] The Respondent's legal representative affirms that the question of what law would be applicable to the Applicants' citizenship applications, when reopened, was not part of the Agreement and was not, in any event, raised by the Applicants' legal representative. According to her evidence, the sole purpose of the Agreement was to reopen the Applicants' applications and process them as if the Applicants were still minors.

[47] The Respondent claims, therefore, that the Agreement's lock-in date of November 2009 was for the age and not for the applicable law.

[48] According to the Applicants' legal representative, the Agreement meant that the Applicants' applications were to be processed and assessed on the basis of the Act, as it stood in 2009 (Applicants' Record, T-542-19 and T-544-19 at p. 183-184). The Applicants further contend that the very wording of the Agreement convey the intentions of both parties to encompass all circumstances at the lock-in date of November 2009, including the applicable Citizenship law, and not merely to have their applications processed as minors. Otherwise, they say, the reference in the Agreement to the fact that their applications would be processed as minors "based on their applications dated 2009/11/09" would be redundant and serve no apparent purpose.

[49] The Applicants claim, therefore, that the Agreement did not allow the Officer to resort to section 23.1 of the current Act in order to request additional information other than proof that they had obtained permanent resident status and had not formally lost it at the time their applications were submitted.

[50] At the hearing of these judicial review applications, the Respondent contented that the applicable law issue was somewhat irrelevant as the Officer reasonably found that the Applicants had failed to establish that they still had permanent residence status at the time their citizenship applications were filed. This alone, the Respondent says, is determinative of said applications.

[51] In my view, the Agreement permitted the Officer to inquire into the issue of the Applicants' permanent residence status at the time their applications were filed. Key to this finding is the Applicants' understanding that the Respondent's proposed terms of what would become the Agreement was "in no way a promise of citizenship but only an offer to reopen the citizenship files received on 2009/11/09". If this had to have any meaning, it meant that the permanent resident status issue, stemming from the fact that the Applicants could only provide expired PR Cards in support of their applications, could be looked at by the Officer as the other subsection 5(2) criterion – that of being the children of a Canadian citizen - was no longer at issue given that their father's citizenship had been reinstated back to the date it was first granted.

[52] In sum, when the evidence as to what the Agreement meant is considered as a whole, I find that it was open to the Officer to inquire into the Applicants' permanent residence status as of the time their citizenship applications were filed and to resort to section 23.1 of the Act, a purely procedural provision providing a process to be followed by the Officer in conducting her inquiry, in order to do so. As I said before, section 23.1 was made applicable to the Applicants' applications by the operation of the transitional provisions of the SCC Act and was, in any event, of immediate application to pending applications by virtue of the principles of statutory interpretation (Pierre-André Côté, *Interprétation des lois*, 4e éd., Montréal, Éditions Thémis, 2009 at p. 203; *Application under s. 83.28 of the Criminal Code (Re)*, 2004 SCC 42 at para 62). The Agreement did not change that.

[53] I am satisfied, therefore, that there has been no violation of the letter and spirit of the Agreement in that regard.

[54] In any event, as we will see, the Officer was, in my opinion, entitled to obtain information regarding the requirements that were in force in 2009, even if section 23.1 of the Act was found not to apply to the Applicants' pending applications due to the Agreement. As I will explain, it would be contrary to the achievement of the purpose of subsection 5(2) of the Act if a citizenship officer had no authority, before the coming into force of section 23.1 of the Act, to inquire further when a doubt that a citizenship applicant did not fulfil the fundamental requirements for grant of citizenship arose from information provided by that applicant.

[55] The issue then is whether the Officer's findings regarding the Applicants' permanent resident status as of November 2009, was reasonable. If it was, then it is, as the Respondent contends, determinative of the present case. If it is not, then the issue becomes whether the Officer was entitled to require that the Applicants also establish that they meet a substantive citizenship requirement that did not exist at the time they filed their applications, that is, that they still have permanent resident status today. As I conclude that the Officer's finding regarding their status at that time was reasonable, it will not be necessary to look into this other issue and the related abuse of process and procedural fairness sub-issues.

[56] The Applicants claim that the Officer could only conclude as she did if she had evidence before her that the Applicants had formally lost their permanent residence status through a determination made under subsection 46(1) of IRPA. They further claim that the Officer's finding runs contrary to the GCMS Notes and the emails between other citizenship officials which show that they were considered to be permanent residents at the time.

[57] It is important to underscore, at this stage of the analysis, that Canadian citizenship is a privilege that ought not to be granted lightly (*Canada (Citizenship and Immigration) v Pereira*, 2014 FC 574 at para 21). Indeed, being a Canadian citizen confers advantages, including a number of constitutional rights, available only to that group of people (*Murad v Canada (Citizenship and Immigration)*, 2013 FC 1089 at para 43).

[58] The onus was on the Applicants to demonstrate that they met the requirements of the Act when they submitted their applications (*Zhao v Canada (Citizenship and Immigration)*, 2016 FC 207 at para 20). Having presented expired PR Cards in support of their citizenship applications, they did not benefit from the presumption of subsection 31(2)(a) of IRPA, which provides that a person in possession of a PR Card is presumed to be a permanent resident. The onus was therefore on them to establish that they still had that status when they filed their applications.

[59] In *Saab v Canada (Citizenship and Immigration)*, 2018 FC 653 [*Saab*], this Court (per Justice Peter Annis) discussed the interplay between subsection 46(1) of IRPA and the requirement under subsection 5(2) of the Act of being “a permanent resident within the meaning of subsection 2(1) of the [IRPA]”. Although that case involved minor applicants living outside Canada – here, the record is not clear as to where the Applicants were residing at the time they submitted their citizenship applications although the record is clear that they were living outside Canada at the time of the Officer’s inquiry, it provides, in my view, useful guidance as to the proper interpretation of that requirement.

[60] In that case, the two minor applicants had become permanent residents of Canada on June 30, 2010. Right after their father was granted Canadian citizenship in 2016, they also applied for citizenship under subsection 5(2) of the Act. At the time of their applications, they appeared, as in the present case, to meet the two criteria pursuant to subsection 5(2) of the Act as they had been granted permanent resident status and they were the children of a Canadian citizen.

[61] However, they included, in their applications, photocopies of their PR Cards, which had expired on August 5, 2015. They also indicated, in their applications, that they had been outside of Canada for a substantial amount of time between August 12, 2010, and September 27, 2016.

[62] The citizenship officer assessing their applications had concerns that they had not maintained their permanent resident status. As a result, that officer sought additional evidence, including copies of their valid PR Cards and informed them that, in the event they were outside Canada, which they were, they would need to undergo a determination of their permanent resident status under subsection 46(1)(b) of IRPA.

[63] The applicants refused to undergo the residency determination on the ground that the Act only required them to be permanent residents who have not lost status through a formal process. Because they had not lost their status, they considered they were permanent residents by the sole operation of the law and that it should have been enough for a grant of citizenship under subsection 5(2) of the Act.

[64] Having failed to provide the information requested, their citizenship applications were treated as having been abandoned pursuant to subsection 13.2(1) of the Act. The Applicants challenged the officer's decision by seeking an order of mandamus to compel the Minister of Citizenship and Immigration to finalize their citizenship applications.

[65] The "core interpretive issue" in that case concerned the "appropriate interpretation of "permanent resident" in section 5(2) of the Act as determined under the IRPA" (*Saab* at para 22). The parties acknowledged that the only ground upon which the grant of citizenship could be denied to the applicants was if they were found not to be "permanent residents" within the meaning of subsection 5(2) of the Act, which refers back to IRPA.

[66] As is the case here, the applicants in that case argued that the only reasonable interpretation of subsection 5(2) of the Act was that they remain permanent residents, within the meaning of that provision, unless a final determination was made that their status had been lost pursuant to the provisions of IRPA (*Saab* at para 27).

[67] Justice Annis held that the applicants' position "would frustrate the administration of justice applicable to the granting of Canadian citizenship by preventing an appropriate final determination on the Applicants' permanent residency status as a condition for Canadian citizenship" (*Saab* at para 28). He stated, in that regard, that the principle underlying the requirement related to that status of a physical presence in Canada for citizenship purposes was the same for both adults and children as this was part of an "inculcation process to absorb Canadian values and how Canadians are expected to conduct themselves" (*Saab* at para 60).

[68] Echoing the oft-quoted principle that citizenship as well as permanent resident status are privileges, Justice Annis opined that granting Canadian citizenship to applicants who do not meet the permanent residency requirements “would undermine the administration of the statutory procedures established to grant citizenship” (*Saab* under subsection B(1)). He underscored that in such context, the factual circumstances of each case “should be determined constructively with the view to achieving the purpose of the provisions regarding permanent resident status” (*Saab* at para 42).

[69] But more importantly, in my view, Justice Annis held that the applicants’ position undermined a “fundamental principle relating to the administration of justice” which ought to inform the interpretation of subsection 5(2) of the Act, that principle being that “in any circumstance giving rise to a legal determination that may negatively affect a person, it is a logical and imperative tenet, whether stated or not, that a person cannot benefit by the reasonable delay required in making a juridical determination, so as to render that determination as not serving its full purpose” (*Saab* at para 35).

[70] It is in that context that must be understood Justice Annis’s statement that the granting of Canadian citizenship is not a “race to the finish” where citizenship applicants are “able to pass freely without restriction through the citizenship granting process to obtain all the benefits of Canadian citizenship, before their status as permanent residents can be determined, in the face of an Officer initiating an inquiry into that very question based on information provided by the Applicants.” (*Saab* at para 34).

[71] His view that individuals whose permanent resident status is being investigated should not be allowed to gain citizenship before a final determination can be made, was reinforced by his analysis of the extrinsic evidence regarding the enactment of subsection 46(1) of IRPA, even though, he held, permanent resident status should not be immediately lost upon the expiration of a PR Card "because Canada is a society based on the Rule of Law" (*Saab* at paras 51 to 54).

[72] Although *Saab* differs in certain respects from the present case in that *Saab* involved mandamus proceedings as well as the presumption of subsection 32(1)(b) of IRPA, the principles set out in that case, which I fully accept, as to what should inform the interpretation of subsection 5(2) of the Act when it comes to the requirement of being a permanent resident within the meaning of IRPA, are, in my view, equally applicable to the present case.

[73] To paraphrase Justice Annis, the Applicants in this case should not be able to pass through the citizenship granting process free of restrictions before their status as permanent residents can be determined, in the face of an officer initiating an inquiry into that very question based on information provided by the Applicants (*Saab* at para 34). In other words, the Applicants' case as to whether they met the permanent residence status requirements of subsection 5(2) of the Act when they filed their citizenship applications in November 2009 was to be determined constructively, in light of the Officer's concerns that they might not have maintained that status, with a view to achieving the purpose of that provision.

[74] In this regard, the GCMS Notes clearly show that the Officer had concerns with the fact that the Applicants had provided expired PR Cards in order to establish that they had permanent

resident status when they applied for Canadian citizenship. For the Officer, this seemed at odds with the fact they had indicated, in their application form, not having resided outside Canada for more than six months since they entered Canada. Coupled with the fact their father's residency had been under investigation at the time for alleged residency fraud, an allegation that was eventually dismissed, in the context of the father's citizenship revocation, on purely procedural fairness grounds, this, in my view, provided sufficient basis for the Officer to initiate an inquiry into that question and to require further information that would assist her in determining said question.

[75] Again, by only providing expired PR Cards in support of their citizenship applications, the Applicants did not benefit from the presumption set out in subsection 31(2)(a) of IRPA that they possessed permanent resident status at the time of the filing of their applications. Therefore, the onus was still on them to establish that criterion.

[76] As I have already indicated, the Officer, in such context, was entitled to request from the Applicants a copy of any passports and/or travel documents, valid and expired, covering the period between the time they became permanent residents and the time they filed their citizenship applications (Applicant's Record, T-542-19 and T-544-19, at p. 148 and 150). It was reasonably open to her, in my view, to conclude that the Applicants had not met their onus by only providing a copy of their landing records issued for the purposes of entering Canada. Those records established that the Applicants had permanent resident status when they entered Canada in August 2003, but were inadequate proof, according to the Officer, that the Applicants still had

that status in November 2009 given the nature of the information they provided in support of their applications. Again, I cannot say that this finding warrants the Court's intervention.

[77] The Applicants contend that the GCMS Notes and the email correspondence between citizenship officials in 2010 contradict that finding. As I indicated previously, the Officer found that these notes and emails were not sufficient evidence to establish that in 2009, the Applicants had permanent resident status.

[78] I find nothing in the GCMS Notes confirming, or tending to confirm, that the Applicants had permanent resident status in 2009. Rather, as of September and October 2010, these notes reveal that the citizenship authorities were concerned by the fact the Applicants filed expired PR Cards along with their citizenship applications and that these concerns justify an investigation. As of February 15, 2011, the GCMS Notes indicate that citizenship should not be granted to the Applicants without consulting the Case Management Branch.

[79] The GCMS Notes coupled with a review of the email correspondence between citizenship officials in 2010 demonstrate an ongoing concern regarding the Applicants' status. In particular, an email sent on October 13, 2010, is helpful to understand this concern. Answering a question regarding whether Khaled was still a permanent resident, due to the filing of an expired PR Card and the notes regarding residency review, a citizenship official mentions that he would appear to be a permanent resident, but because he was the subject of a residency investigation, such review could lead to the loss of his status.

[80] Therefore, it seems, from the reading of these GCMS Notes and emails, coupled with the teachings of *Saab* that individuals whose status is being investigated should not be allowed to gain citizenship before final determination on their status is made that the Applicants' permanent resident status was under scrutiny when they were first assessed in 2010 by citizenship officials. This concern existed with respect to the Applicants' status as of November 2009 and I did not see anything in the notes and emails that would alleviate that concern and allow me to conclude that the Officer committed a reviewable error in finding that this particular evidence was not sufficient to establish that the Applicants had, in 2009, permanent resident status.

[81] In sum, I find that the Officer was entitled, based on the information provided by the Applicants in support of their citizenship applications, to inquire whether the Applicants still had permanent resident status when they applied for citizenship in 2009. In particular, I find that the Agreement did not erode her authority to do so and that, in any event, based on *Saab*, she possessed that authority, even assuming section 23.1 of the Act did not apply to the Applicants' applications.

[82] I further find that it was reasonably open to the Officer to conclude that the Applicants had failed to establish that they still had permanent resident status in 2009. There is therefore no need to determine whether the Officer was entitled to also require from the Applicants proof that they still had permanent resident status at the time she rendered her decision as the 2009 determination is, as correctly submitted by the Respondent, dispositive of the whole case.

[83] One last point. The Applicants claim, based on a judgment of this Court in *Stanizai v Canada (Citizenship and Immigration)*, 2014 FC 74 [*Stanizai*], that the Officer had no authority to hold off on granting their citizenship applications pending the receipt of an "immigration clearance".

[84] In that case, the applicant's citizenship application had been approved by a citizenship judge, but the granting of citizenship was held off pending an "immigration clearance". The Court held that once the citizenship judge had rendered his decision, the respondent minister "ha[d] no further function to perform or other remedy other than an appeal", except if misrepresentations were discovered after the citizenship judge's decision had been issued (*Stanizai* at paras 31-32).

[85] Since there was no appeal of the citizenship judge's decision and since the respondent minister was not able to point to any such misrepresentations, the Court concluded that the granting of citizenship on the applicant could not be held off on the basis that an "immigration clearance," which had not been sought in any event, needed to be obtained prior to granting citizenship. The Court observed that the citizenship judge was fully aware of all the conflicting information that had been provided by the applicant with respect to his absences from Canada and that the respondent minister had been unable to point to any new information regarding the frequency and duration of the applicant's absences from Canada during the relevant period of time (*Stanizai* at paras 40-41).

[86] The Applicants rely on the Court's finding that there was no statutory authority for obtaining such clearance prior to granting citizenship (*Stanizai* at para 48) to claim that the Officer's inquiry regarding their permanent resident status in 2009 was illegal. With respect, *Stanizai* has no application here as it was decided in an entirely different context. Contrary to *Stanizai*, the Officer did not seek clarification of the Applicants' permanent resident status in a context where the Respondent had no further function to perform regarding the Applicants' citizenship applications; she was rather performing the very function of determining whether the Applicants were satisfying one of the two requirements they had to meet in order to be granted citizenship, a function that only the Respondent could perform in the context of a subsection 5(2) application.

[87] What now needs to be determined is whether, as contended by the Applicants, the Officer, in reaching her conclusion regarding the Applicants' status in 2009, breached the duty of procedural fairness owed to them.

B. *Did the Officer breach the principles of procedural fairness by not providing the Applicants with an opportunity to disabuse her concerns regarding the information they provided so as to establish their immigration status at the time they filed their applications?*

[88] The Applicants argue that the Officer failed to provide them with an opportunity to respond to her concerns about their permanent resident status in 2009.

[89] As indicated previously, the Officer sent the Applicants a first letter on August 20, 2018, requesting documentary evidence showing that they were in Canada from August 3, 2003 until

2009. In another letter, dated October 25, 2018, she asked the Applicants to provide a copy of their valid PR Cards. In response to this letter, the Applicants provided the Officer with some evidence, including their landing records that she eventually considered and found insufficient to establish that they had permanent resident status in 2009.

[90] The Officer sent the Applicants another letter, in January 2019, asking them this time to provide evidence demonstrating that they were still permanent residents as of the date of the request.

[91] The Applicants claim that because the last two letters did not raise any specific concerns regarding their status from 2003 to 2009, this meant that the Officer appeared to have no further concerns regarding their status during this period and appeared, therefore, satisfied with the information they had already provided to her with respect to their status in November 2009.

[92] It is well settled that an officer has no obligations to share his or her concerns, when they arise from the evidence submitted by the Applicants or directly from the requirements of the Act (*Nassima v Canada (Citizenship and Immigration)*, 2008 FC 688 at para 18).

[93] As I mentioned previously, the Applicants had the onus to demonstrate that they satisfied the requirements of subsection 5(2) of the Act. They submitted evidence regarding the requirements of the Act and some concerns arose from said evidence.

[94] The Applicants submit that *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, together with *Rukmangathan v Canada (Citizenship and Immigration)*, 2004 FC 284 [*Rukmangathan*], command that the duty of fairness requires that immigration officials inform applicants of concerns that arise from evidence they tendered. However, *Rukmangathan* was rendered in a much different context, where a visa officer, at the interview, failed to inform the applicant of her negative impressions of the evidence he tendered and failed to give him the opportunity to respond to her concerns in several key areas, which were critical to her refusal of the applicant's permanent residence application.

[95] Here, the Officer did inform the Applicants of the concerns raised by the filing of their expired permanent resident cards. The Officer sent three letters to the Applicants, requesting for evidence in order to assess whether or not they were permanent residents, one of the fundamental requirements of the Act. To fulfill the duty of procedural fairness she owed to the Applicants, the Officer, in my view, did not have to provide them with a running score of the weaknesses of their applications, after they first submitted some evidence in November 2018, which is what the Applicants are ultimately seeking:

> However, this principle of procedural fairness does not stretch to the point of requiring that a visa officer has an obligation to provide an applicant with a "running score" of the weaknesses in their application: *Asghar v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1091(T.D.) (QL) at para. 21 and *Liao v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1926 (T.D.) (QL). And there is no obligation on the part of a visa officer to apprise an applicant of her concerns that arise directly from the requirements of the former Act or Regulations: *Yu v. Canada (Minister of Employment and Immigration)* (1990), 36 F.T.R. 296, *Ali v. Canada (Minister of Citizenship and Immigration)* (1998), 1998 CanLII 7681 (FC), 151 F.T.R. 1 and *Bakhtiania v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1023 (T.D.) (QL).

[Emphasis added]

[96] I am not satisfied, therefore, that the Officer's decision that the Applicants had not established that they still had permanent resident status at the time they filed their citizenship applications, was rendered in breach of the principles of procedural fairness.

[97] The Applicants' judicial review applications will therefore be dismissed. No question of general importance was proposed for certification and none arises in my view.

[98] In matters governed by the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, no costs shall be awarded to or payable by any party in respect of an application for judicial review unless the Court, for special reasons, so orders. Given the outcome of theses two cases, I see no special reasons to award costs against the Respondent, as the Applicants have urged me to do. Again, Canadian citizenship is a privilege that ought not to be granted lightly. I see no abuse of process, therefore, in the fact that the Applicants' citizenship applications were put on hold while their father's citizenship status was the subject of revocation proceedings. These proceedings were central in determining whether the Applicants met one of the two requirements for a grant of citizenship under subsection 5(2) of the Act.

JUDGMENT in files T-542-19 and T-544-19

THIS COURT'S JUDGMENT is that:

1. The applications for judicial review in file T-542-19 and in file T-544-19 are dismissed;
2. No question is certified;
3. No costs.

"René LeBlanc"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	T-542-19 AND T-544-19
DOCKET:	T-542-19
STYLE OF CAUSE:	NOUR ALI NABOULSI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	T-544-19
STYLE OF CAUSE:	KHALED ALI NABOULSI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	NOVEMBER 4, 2019
REASONS FOR JUDGMENT AND JUDGMENT:	LEBLANC J.
DATED:	DECEMBER 20, 2019

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